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IN THE
COURT OF APPEALS OF INDIANA

JERRY W. JOHNSON, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A04-0605-CR-251
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0509-FC-52

January 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Jerry Johnson, pleaded guilty to Escape as a Class C felony,[1] and the trial court subsequently sentenced him to four years imprisonment. Upon appeal, Johnson claims that his sentence is inappropriate.

We affirm.

Shortly before August 31, 2005, Justin Wisdom, the boyfriend of Nicole Johnson ("Nicole"), sent money to Johnson, Nicole's brother, to use for the purpose of bailing Nicole out of jail. Johnson, however, used most of the money to purchase drugs and did not give the remainder of the money to Nicole. At some point Nicole retrieved the remaining money from Johnson's possession as he slept. On August 31, 2005, Johnson discovered that the money was gone, so he went to Nicole's home to try to retrieve it. Johnson was under the influence of prescription drugs at the time, having consumed between fifteen and thirty pills. After Nicole shut the door on Johnson and told him to leave, Johnson pounded on the door and pushed the door open, allegedly causing damage to the door. Nicole called the police.

Officer Nicholas Beetz of the Lawrenceburg Police Department responded to the call. After observing the residence and speaking with the individuals present, Officer Beetz placed Johnson under arrest for criminal mischief and residential entry. Upon being placed in the back of Officer Beetz's patrol car, Johnson began yelling and beating his head against the window. While transporting Johnson to the police department, Johnson asked Officer Beetz how long he would have to spend in jail and then he started crying. When Officer Beetz slowed the car as he approached a railroad track, Johnson

[1] Ind. Code § 35-44-3-5(a) (Burns Code Ed. Repl. 2004).

opened the door of the patrol car and fell out of the car. Officer Beetz found Johnson lying on the side of the street, uninjured. Officer Beetz then attempted to put Johnson back in the patrol car, but Johnson refused to put his feet in the car after being ordered to do so several times. Officer Beetz had to physically pull Johnson back into his patrol car.

Officer Beetz then began driving again, and as soon as he crossed over the railroad tracks, Johnson again opened the back door, exited the patrol car, and began running down the street. Officer Beetz and another officer chased Johnson down and had to tackle him. After being re-apprehended, Johnson began cursing at the officers, calling them names, and threatening them by saying, "[W]ait [un]til I get out of here." Transcript at 45. Johnson also asked the officers to shoot him. At the time of this incident, Johnson was on probation for an operating while intoxicated conviction.

On September 1, 2005, the State charged Johnson with resisting law enforcement as a Class D felony, criminal mischief as a Class B misdemeanor, and escape as a Class C felony. Pursuant to a plea agreement, Johnson agreed to plead guilty to escape as a Class C felony, and in exchange the State agreed to dismiss the remaining charges and not to re-file a request for probation violation in the OWI cause based upon these charges. Under the terms of the agreement, sentencing was left to the trial court's discretion. On March 6, 2006, the trial court accepted the plea agreement and entered a judgment of conviction against Johnson for escape as a Class C felony.

While released on bond pending sentencing in this case, Johnson was involved in an automobile accident, from which he fled the scene. Johnson's car was towed and impounded, and Johnson was subsequently arrested on criminal trespassing charges after

he was caught allegedly attempting to climb the fence of the impound lot after hours. The owner of the impound lot prevented Johnson from attempting to leave. Thereafter, on April 18, 2006, the trial court held a sentencing hearing and subsequently sentenced Johnson to the advisory sentence of four years.[2]

Upon appeal, Johnson argues that his sentence is inappropriate.[3] Article 7, Section 14 of the Indiana Constitution authorizes an independent appellate review of imposed sentences. In addition, Indiana Appellate Rule 7(B) articulates a standard of review designed as guidance for appellate courts, providing that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Our Supreme Court has recently reiterated that this formulation "place[s] the central focus upon the role of the trial judge, while at the same time reserving for the appellate courts the chance to review sentencing decisions in a climate more distant from local clamor." Childress v. State, 848 N.E.2d 1073, 1079 (Ind. 2006) (citing Serino v.

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[2] Effective April 25, 2005, the General Assembly made sweeping changes to the sentencing statutes in response to our Supreme Court's decision in Smylie v. State, 823 N.E.2d 679, 682-84 (Ind. 2005), cert. denied, 126 S. Ct. 545, wherein the Court held that the rule announced in Blakely v. Washington, 542 U.S. 296 (2004) rendered Indiana's prior sentencing scheme unconstitutional. Because Johnson committed the instant offense on or about August 31, 2005, we apply the sentencing statutes in their amended form. See Weaver v. State, 845 N.E.2d 1066, 1070 (Ind. Ct. App. 2006), trans. denied; Ford v. State, 755 N.E.2d 1138, 1143 (Ind. Ct. App. 2001), trans. denied.

The statutes now in effect do not provide for what was termed under the former statutes as the "presumptive sentence"; instead, the new statutory scheme provides for a sentencing range with "advisory sentences." Specifically, in its amended form Indiana Code § 35-50-2-6 (Burns Code Ed. Supp. 2006) provides in pertinent part: "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years."

[3] In his brief, Johnson states that his sentence is "manifestly unreasonable," but then cites to the current standard found in Indiana Appellate Rule 7(B), effective January 1, 2003, which permits a reviewing court to revise a sentence upon finding that the sentence is "inappropriate in light of the nature of the offense and the character of the offender."

State, 798 N.E.2d 852, 856-57 (Ind. 2003)). Even where the trial court meticulously follows the proper procedure in imposing the sentence, Appellate Rule 7(B) authorizes a reviewing court to revise a sentence which it concludes is inappropriate in light of the nature of the offense and character of the offender. Id. at 1079-80 (citing Hope v. State, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005)).

First considering the nature of the offense, we note that Johnson not once, but twice exited a moving patrol car while he was handcuffed and being transported to jail.[4] The second time, Johnson ran away and had to be chased down by police officers. Upon being re-apprehended, Johnson cursed at and threatened the officers. We agree with the State's characterization that "[t]his offense demonstrates a serious disrespect for the law and for authority and it shows a willingness to engage in risky behavior in order to avoid dealing with the consequences of his actions." Appellee's Brief at 5.

Turning now to the character of the offender, we first consider Johnson's criminal history. At the age of twenty-two, Johnson has accumulated nine run-ins with the juvenile justice system and eighteen run-ins with the adult criminal justice system. (A-15-19) Johnson's juvenile history consists of an adjudication for theft, and his adult history consists of convictions for theft on three separate occasions, disorderly conduct, and operating while intoxicated.[5] Although relatively minor, Johnson's criminal history

[4] In his brief, Johnson attempts to pass blame for his escape to the fact that "there was a malfunction of the locks on the police car enabling [him] to open the back door." Appellant's Brief at 5. Officer Beetz explained that the car door locks had not malfunctioned; rather, the child safety locks were not operational. In any event, it remains that Johnson had to physically unlock the door and open it by pulling on the handle.

[5] The other contacts with either the juvenile or adult criminal systems were for minor offenses or infractions, for which Johnson paid fines and costs and served no jail time.

demonstrates his unwillingness to be bound by the rules of society and its sheer length demonstrates his continued contempt for the law.

Further, although Johnson has been provided with opportunities for rehabilitation through lesser sentences involving probation, community service, and "theft school," he has continued to commit crimes. App. at 18. As the State correctly notes, from 1998 to the present, Johnson has a "virtually unbroken string of juvenile adjudications, adult convictions, and probation violations." Appellee's Brief at 6. After pleading guilty in the present case and while released on bond awaiting sentencing, Johnson continued to demonstrate his unwillingness to abide by the rules of society by leaving the scene of an accident. Johnson's plea of guilty in the present case was hardly a statement by Johnson that he is committed to reforming his life.

In a similar vein, the fact that Johnson pleaded guilty does not speak highly to his character or warrant a reduced sentence. As noted above, Johnson benefited from the plea agreement in that the State agreed to dismiss two charges and not to re-file a request for probation violation. Johnson's decision to plead guilty was likely a pragmatic decision, not one guided by his desire to accept responsibility or, as noted above, one induced by a desire to reform his life. See Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999) (noting that a guilty plea is not entitled to significant mitigating weight where the defendant receives a substantial benefit from the plea).

Johnson sought leniency from the trial court on the basis of his addiction to and abuse of drugs. Johnson's drug abuse began approximately one year prior to the instant offenses and thus cannot be used as an excuse for the offenses committed prior to that

time. Moreover, although Johnson sought help for his addiction at a methadone clinic, he dropped out after one month because he felt he was just replacing one drug for another. Johnson did not seek out any other form of substance abuse treatment. Instead, Johnson continued to abuse controlled substances and now submits that such abuse and addiction excused his behavior in the incident before us.[6] Johnson's awareness of his drug abuse/addiction and his subsequent failure to take steps to address it is another indication that Johnson is not committed to reforming his life. Such should not be rewarded with a mitigated sentence. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (noting that a substance abuse problem may be considered as an aggravating circumstance where the defendant is aware of the problem and does nothing to address it), trans. denied.

Having considered what the record reveals about the nature of the offense and the character of the offender, we cannot say that the four-year advisory sentence is inappropriate.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.

[6] Johnson maintains that he was on a two-day "high" and had taken fifteen to thirty pills prior to the current incident.